

Claims 1-8 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,891,017 to Swindle et al.

Applicant respectfully traverses the rejections of claims 1-8 under § 102(b) and § 102(e). As set forth in claim 1, a method for improving cardiac function comprises inserting a tensile member into a patient, and inserting the tensile member into the patient's heart so as to compress and close off lower portions of both ventricles of the heart.

The Donlon reference shows, in Figure 16, the clamping of jaws (82) of a forceps-type instrument about the aorta (AA). The Swindle reference (Figure 6) discloses a surgical stabilizer with suction jaws pressed into a heart wall about a coronary artery (150). Neither of these references suggests the use of those instruments to compress and close off *lower portions of both ventricles* of a heart, as set forth in claim 1. In addition, neither of the references suggests the *insertion* of any portion of the instruments *into* the patient's heart, as recited in claim 1. The prior art instruments remain outside of the heart wall.

### ***Conclusion***

For the foregoing reasons, independent claim 1, as well as the claims dependent therefrom, is deemed to distinguish over the art of record. Also, the obviousness-type double patenting rejection of claims 1-19 is deemed to have been overcome by the submission of the enclosed Disclaimer. Accordingly, claims 1-19 appear to be in condition for allowance. An early Notice to that effect is earnestly solicited.

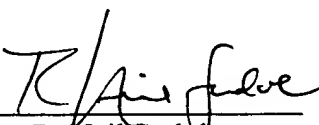
Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the

number below.

The correspondence address for this application has changed. The correct address is set forth below. A formal Change of Correspondence Address is enclosed.

Respectfully submitted,

COLEMAN SUDOL SAPONE, P.C.

By:   
R. Neil Sudol  
Reg. No. 31,669

714 Colorado Avenue  
Bridgeport, CT 06605-1601  
(203) 366-3560

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**APPENDIX TO AMENDMENT IN APPLICATION NO. 09/435,525  
SHOWING MARKED UP VERSION OF AMENDED SPECIFICATION PARAGRAPH**

Page 1, amend the paragraph of lines 3-5 as follows:

This application is a continuation-in-part of application No. 09/426,744 filed October 25, 1999, now U.S. Patent No. 6,258,021. Application No. 09/426,744 was filed as a continuation-in-part of application No. 09/121,477 filed July 23, 1998. This application is also a continuation-in-part of application No. 09/121,477, now U.S. Patent No. 6,155,968.